IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

Crl.MC.No. 1174 of 2007()

MC.207/2004 of

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PETITIONER/COUNTER PETITIONER:

REGHUNATHAKURUP @ JAYAN AGED 34 YEARS,
S/O.LATE RAGHAVAN NAIR, NIRAVEL PUTHEN VEETTIL,
THAZHAM.P.O., MALAYALAPPUZHA VILLAGE,
KOZHENCHERRY TALUK.

BY ADV. SRI.V.SETHUNATH

RESPONDENTS/PETITIONERS:

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1. SREEVIDHYA AGED 28 YEARS,
D/O.PONNAMMA, KANJIRAKKATTU
VEETTIL, PERUMPETTY P.O., MURI AND
VILLAGE, MALLAPPALLY TALUK.

2. CHITHRASENAN S/O.REGHUNATHAKURUP,
AGED 6 YEARS (MINOR), C/O.REGHUNATHA KURUP,
NIRAVEL PUTHEN VEETTIL,
THAZHAM.P.O., MALAYALAPPUZHA VILLAGE,
KOZHENCHERRY TALUK.

3. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1174 of 2007

Dated this the 12th day of April 2007

O R D E R

The petitioner has suffered an order under Section 125 Cr.P.C directing payment of maintenance to the claimants - his wife and child. The amounts due under that order having not been paid, steps are afoot to execute that order. The petitioner raises a defence that the wife is now re-married and that the child has been returned to the custody of the petitioner. After the date of such re-marriage and return of the child to the custody of the petitioner, the petitioner is not liable to pay any maintenance, it is contended. Has the petitioner filed an application under Section 127 Cr.P.C to alter and modify the earlier order passed under Section 125 Cr.P.C? The learned counsel for the petitioner submits that though such petition was filed, the Family Court is not entertaining the application. How was such petition filed? What is the number of the petition filed and what is the court fee number? None are made available to this court. I refuse to assume that any family court, if such an

application is filed, will not entertain such an application, if properly filed. Either it has to be returned of defect or it has got to be dismissed in limine. The third alternative is that notice should be ordered in that petition. It is difficult to assume that any family court would follow a procedure different from these three. Submission made does not at all deserve acceptance.

2. This Criminal Miscellaneous Case is, in these circumstances, dismissed but with the specific observation that it shall be open to the petitioner to raise the defence in the Execution Petition that after the date of re-marriage and after the return of the child to the petitioner, he is not liable to pay maintenance and that the order is hence not liable to be executed. It shall also be open to him to apply to get the order of maintenance modified/cancelled by resort to the provisions of Section 127 Cr.P.C.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF APRIL 2007